

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBERT RUSSELL SPENCE,	)	
	)	2:13cv16
Plaintiff,	)	Electronic Filing
	)	
v.	)	Judge Cercone
	)	Chief Magistrate Judge Lenihan
KEELEY SCHAFER, <i>et al.</i> ,	)	
	)	ECF Nos. 8, 9, 10, 11, 12, & 13
Defendants.	)	
	)	
	)	
	)	

**MEMORANDUM ORDER**

This case was commenced on January 4, 2013, upon the filing of a Motion to Proceed *In Forma Pauperis*, and was referred to Chief United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and Local Rules of Court 72.C and 72.D. Before the motion was ruled on, Plaintiff filed an Amended Complaint on January 9, 2013 (ECF No. 4). Thereafter Plaintiff filed the required financial information, and the Motion to Proceed *In Forma Pauperis* was granted on February 22, 2013. On that same date, before service was made on Defendants, Plaintiff filed a Second Amended Complaint (ECF No. 7), along with four Motions for Preliminary Injunction against Korry Pitts and 412 Motoring (ECF No. 8), Cortorra Brownfield (ECF No. 9), Keeley and Kevin Schafer (ECF No. 10), and Chasity Thompson (ECF No. 11). Plaintiff also filed a Motion for Temporary Restraining Order against Keeley and Kevin Schafer (ECF No. 12) on February 22, 2013.

The Magistrate Judge's Report and Recommendation (ECF No. 13), filed on March 7, 2013, recommended that the Second Amended Complaint (ECF No. 7) be dismissed with prejudice as to the malpractice claim against Defendant Robert Stechp, and dismissed without prejudice as to all remaining claims and Defendants. The Report and Recommendation further recommended that Plaintiff be given leave to file a third amended complaint against certain Defendants. The Report and Recommendation also recommended that the Motions for Preliminary Injunction (ECF Nos. 8, 9, 10, and 11) be denied, and the Motion for Temporary Injunction (ECF No. 12) be denied.

Service of the Report and Recommendation was made on Plaintiff at Beaver County Jail, 6000 Woodlawn Road, Beaver, PA 15001. Plaintiff was informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.D.2 of the Local Rules of Court, that he had fourteen (14) days to file any objections. Plaintiff filed Objections (ECF No. 14) to the Report and Recommendation on March 25, 2013.

After *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation and objections thereto, the following Order is entered:

**AND NOW**, this 2<sup>nd</sup> day of April, 2013,

**IT IS HEREBY ORDERED** that the Second Amended Complaint filed by Plaintiff Robert Russell Spence (ECF No. 7) is **DISMISSED WITH PREJUDICE IN PART AND DISMISSED WITHOUT PREJUDICE IN PART** as follows:

(1) Plaintiff's Second Amended Complaint (ECF No. 7) is **DISMISSED WITH PREJUDICE** as to the malpractice claim against Defendant Robert Stechp; and

(2) Plaintiff's Second Amended Complaint (ECF No.7) is **DISMISSED WITHOUT PREJUDICE** as to all remaining claims and Defendants.

**IT IS FURTHER ORDERED** that Plaintiff shall be allowed leave to file a third amended complaint as to the Schafer Defendants, but only insofar as he is able to adequately plead violations of specific federal laws or specific rights under the U.S. Constitution. If Spence wishes to pursue a Section 1983 claim against the Schafers, he must also allege facts to show that the Schafers were acting under color of state law. In his third amended complaint against the Schafers, Plaintiff may include claims against other defendants, so long as at least one of the claims asserted against each of the defendants arises out of the same transaction or occurrence as that alleged against the Schafers, as explained in the Report and Recommendation. The third amended complaint shall comply with the requirements of Rule 8 and 10(b). If Plaintiff determines that it would be futile to file a third amended complaint (because he is unable to adequately plead federal claims to establish this Court's subject matter jurisdiction, then Plaintiff may file a notice with the Court indicating he will not be filing a third amended complaint in this action. **The third amended complaint or notice to the Court shall be filed within 21 days of the date of this Order.**

**IT IS FURTHER ORDERED** that the Motions for a Preliminary Injunction against Korry Pitts and 412 Motoring (ECF No. 8), Cortorra Brownfield (ECF No. 9), Keeley and Kevin Schafer (ECF No. 10), and Chasity Thompson (ECF No. 11), **ARE DENIED.**

**IT IS FURTHER ORDERED** that the Motion for Temporary Restraining Order against Keeley and Kevin Schafer (ECF No. 12) **IS DENIED.**

**IT IS FURTHER ORDERED** that the Report and Recommendation (ECF No. 13) of Chief Magistrate Judge Lenihan, dated March 7, 2013, is adopted as the opinion of the Court.



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DAVID STEWART CERCONE  
United States District Judge

cc: Robert Russell Spence  
Beaver County Jail  
6000 Woodlawn Road  
Beaver, PA 15001

*(Via First Class Mail)*